



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 6047 OF 2018

1. Harun Rashid S/o. Hanif Wahid,
Aged about 40 years, Occ. : Nil,
R/o. Q. No.191, Walni Mines,
Tah. Saoner, Dist. Nagpur.
2. Lal Zenda Coal Mines Majdoor
Union (CITU), through its
General Secretary, C/o. Coal
Estate, Civil Lines, Nagpur.

.... **PETITIONERS.**

// VERSUS //

Chief General Manager,
Western Coalfields Ltd.,
Nagpur Area, Jaripatka,
Kasturba Nagar, Nagpur.

.... **RESPONDENT.**

Shri P.D.Meghe, Advocate for Petitioners.
Shri A.M. Ghare, Advocate for Respondent.

CORAM : ANIL S. KILOR, J.
DATED : AUGUST 30, 2023.

ORAL JUDGMENT :

1. Heard.
2. **RULE.** Rule made returnable forthwith. Heard finally by
consent of the parties.

3. The petitioner No.1 was working as S.D.L. Operator and against him a disciplinary proceedings was initiated and a charge-sheet was issued to him on 06/08/2005, alleging that he had submitted three medical bills, dated 06/06/2005, 05/06/2005 and 01/06/2005, amounting to Rs.1001.45, Rs.804.50 and Rs.939.17, respectively for reimbursement. It is further alleged that, on scrutiny, it was found that the reimbursement forms submitted by him were not registered with the hospital, prescriptions of medicines were not issued by any doctor of WCL, N.A. Certificate attached with the prescriptions was not issued by any Pharmacist of Walni Hospital and the signatures of the doctor on the back of the bills did not appear to be real.

4. The petitioner No.1 denied the allegations and stated that the signatures appearing on the bills were not of him and requested for proper examination of those signatures appearing on the bills by Handwriting Expert. He further denies submission of such bills for reimbursement or signing those bills.

5. After the conclusion of the enquiry he was held guilty of the misconduct and accordingly dismissed from service vide order of dismissal, dated 02/02/2008.

6. Thereafter, a reference was made under Section 10 of the Industrial Disputes Act, 1947 for adjudication of a question, 'Whether the action of the Management of M/s. WCL in dismissing the petitioner No.1 w.e.f. 02/02/2008 is legal and justified? If not, to what relief the workman is entitled?'

7. The Central Government Industrial Tribunal (CGIT), vide award dated 21/10/2013, answered the reference in negative and upheld the order of the dismissal of the petitioner No.1. Hence, this writ petition.

8. Shri Meghe, learned counsel for the petitioners submits that the enquiry conducted was not fair and proper. It is submitted that the findings recorded by the Enquiry Officer are perverse and despite the said fact the learned C.G.I.T. held the enquiry as fair and proper and the findings recorded by the Enquiry Officer are not perverse.

9. It is submitted that no documents were supplied along with the charge-sheet and similarly the list of witnesses was not given by the management along with the charge-sheet. It is submitted that the Enquiry Officer did not act impartially and accordingly the objection was raised by the defence representative. It is pointed out that the enquiry

was conducted during the period when the defence representative was out of station. It is further submitted that no sufficient opportunity was given to the petitioner to lead evidence.

10. It is further submitted that without any evidence brought on record that the medical bills in question were submitted by the petitioner No.1, the petitioner has been held guilty of the misconduct and thereby terminated the services of the petitioner No.1.

11. Shri Meghe, learned counsel for the petitioners further submits that considering the charges levelled against the petitioner and the nature of the evidence brought on record to prove the same, the punishment of dismissal is disproportionate. He, therefore, submits that the award passed by the learned C.G.I.T. is illegal and contrary to law.

12. Shri Ghare, learned counsel for the respondent-WCL submits that the enquiry conducted by the Enquiry Officer was fair and proper and the findings of the Enquiry Officer are rightly held not perverse. It is submitted that therefore, the learned C.G.I.T. has not committed any perversity or error holding that the dismissal of the petitioner is just and proper.

13. In light of rival contentions of the parties, I have perused the record and the impugned award.

14. From the record it is evident that the learned Tribunal vide order dated 10/09/2012 decided the validity of departmental enquiry and thereby it was held that the enquiry was legal, proper and in accordance with the principles of natural justice.

15. The enquiry report refers to MR's statement, who further points out that a preliminary enquiry was conducted by Deputy C.M.O., Walni Hospital and Joint Commissioner, Food and Drugs (MS), Nagpur. In the said enquiry, it was found that Ashok Medical and General Stores, Nagpur is not in existence and Bill Nos.918, dated 06/06/2005 and 978 dated 01/06/2005 were not issued by Om Medical Stores, Khaperkheda. Similarly, the reimbursement form submitted by the workman did not bear the entry number of Hospital Register, prescriptions for medicines were not issued or signed by any of the doctors of Walni Hospital. They are fabricated. It was also noticed that N.A. Certification on the prescriptions is not done by any Pharmacist of Walni Hospital and lastly signature of doctor on the backside of bill is forged.

16. In the enquiry in defence the petitioner No.1 had denied submission of the bills in question and also signature on the same.

17. Thereupon, the enquiry was closed and following findings were recorded by the Enquiry Officer:

“1. The A/worker can not escape simply by saying that he has not submitted the MR bill & somebody else has done it.

2. When his old & new MR bills were compared his signatures on both matched with each other. So there was not doubt about the signature.

3. He committed a blunder by writing mother's name in place of wife's.

4. When he was asked during the course of enquiry whether he had received any medical bill in the past. He replied in negative whereas in the past also he had submitted bills & received money. His signature on the paid voucher were shown by the MR during the enquiry. He had been cheating the company for quite long time.”

18. Admittedly, while recording the above referred observations, the Enquiry Officer did not permit the petitioner No.1 to cross-examine the MR who did the preliminary enquiry and the reliance has been placed by the Enquiry Officer on his findings recorded in the said enquiry.

19. Moreover, despite repeated requests to refer the signatures for opinion of the Handwriting Expert, no such course was adopted and

the Enquiry Officer on his own compared the signature and recorded its finding about similarity of signatures.

20. The respondent-WCL has failed to lead any evidence to establish and prove the fact that the bills in dispute were submitted by the petitioner No.1. It is significant, particularly when the petitioner No.1 is specifically denying that the said bills were submitted by him.

21. Admittedly, the learned Labour Court has not gone into above all the issues and facts while holding that the enquiry was fairly conducted. Thus, according to me, in absence of any cogent evidence about submission of bills by the petitioner No.1 and any expert's opinion on the signatures on the bills, the findings recorded by the Enquiry Officer cannot be held just and proper. Accordingly, I have no hesitation to hold that the findings recorded by the Enquiry Officer are perverse.

22. The learned Labour Court, while answering the reference in negative vide impugned award dated 21/10/2013, has held that the jurisdiction of the Tribunal to entertain the disciplinary matters cannot be equated with the appellate jurisdiction. The Tribunal cannot interfere with the findings of the Enquiry Officer or Competent Authority where

they are arbitrary or utterly perverse. It is further held that if the enquiry was held consistent with the rules and in accordance with the principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the Competent Authority.

23. Thus, it is evident that, as the learned Tribunal has held that the enquiry was fair, on merit the Tribunal refused to interfere with the order of dismissal.

24. In the circumstances, as I have already held that the findings recorded by the Enquiry Officer are perverse, the findings recorded in the impugned award vitiates, as the same are based on the findings recorded about the fairness of the enquiry.

25. In that view of the matter, I am of the opinion that the matter needs to be remanded back to the learned Tribunal to decide the same afresh after deciding the issue of fairness of enquiry and whether the findings recorded by the Enquiry Officer are perverse. Accordingly, I pass the following order:

- i) The writ petition is partly allowed.

- ii) The judgment and order dated 21/10/2013 passed by Central Government Industrial Tribunal cum Labour Court, Nagpur in IDA Ref. No.1/2010, is quashed and set aside.
- iii) The matter is remanded back to the learned Tribunal to decide the same afresh after taking into consideration the above referred findings.

The Writ Petition is **disposed of** accordingly. No order as to costs.

(ANIL S. KILOR, J)

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